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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 MAX REED, II,

8 Petitioner,

9 v.

10 JO GENTRY, et al.,

11 Respondents.

Case No.: 2:17-cv-00648-RFB-PAL

ORDER

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13 28 U.S.C. § 2254 habeas corpus petitioner Max Reed, II has filed a motion for
14 appointment of counsel (ECF No. 15). There is no constitutional right to appointed counsel for a
15 federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v.*
16 *Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally
17 discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023
18 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984).
19 However, counsel must be appointed if the complexities of the case are such that denial of counsel
20 would amount to a denial of due process, and where the petitioner is a person of such limited
21 education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at 1196; *see*
22 *also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970). Here, Reed is serving a term of 20 to 50
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1 years, with an equal and consecutive term of 20 to 50 years, and it is unclear whether the legal
2 issues he wishes to raise may be complex. Therefore, Reed's motion for counsel is granted.

3 In light of the appointment of counsel, respondents' motion to dismiss is denied without
4 prejudice.

5 **IT IS THEREFORE ORDERED** that petitioner's motion for appointment of counsel
6 (ECF No. 15) is **GRANTED**.

7 **IT IS FURTHER ORDERED** that the Federal Public Defender for the District of Nevada
8 (FPD) is appointed to represent petitioner.

9 **IT IS FURTHER ORDERED** that the Clerk shall **ELECTRONICALLY SERVE** the
10 FPD a copy of this order, together with a copy of the amended petition for writ of habeas corpus
11 (ECF No. 10). The FPD shall have 30 days from the date of entry of this order to file a notice of
12 appearance or to indicate to the court its inability to represent petitioner in these proceedings.

13 **IT IS FURTHER ORDERED** that after counsel has appeared for petitioner in this case,
14 the court will issue a scheduling order, which will, among other things, set a deadline for the filing
15 of a second amended petition.

16 **IT IS FURTHER ORDERED** that respondent's motion to dismiss (ECF No. 18) is
17 **DENIED** without prejudice.

18 DATED: February 26, 2019.



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20 RICHARD F. BOULWARE, II
21 UNITED STATES DISTRICT JUDGE
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